Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

vides that the conveyance used for the purpose shall be forfeited. There is no limitation or exception that the forfeiture shall depend upon proof of fraud in the owner of the conveyance or on any other condition.

"This court, it is true, in the United States *v.* Two Barrels of Whiskey, 96 Fed. 479, decided in 1899, where the facts were in substance precisely the same as in this case, held in effect that the limiting words 'with intent to defraud' applied not only to the act of transportation, but also to the use of the particular conveyance, thus making it a necessary condition of the forfeiture of any interest in the vehicle that the owner of such interest should have an intent to defraud. As reluctant as we are to overrule that decision, we can find no warrant in the statute for attaching this limitation to the use of the conveyance. The court cited in support of its conclusion, United States *v.* Stowell, 133 U. S. 1. An examination of that case leads irresistibly to the conclusion that it not only does not support the inference that under such a statute the innocent owner or lienor of the offending conveyance is exempt from forfeiture, but suggests exactly the opposite inference. * * *

"There are a number of decisions like United States *v.* 1150½ Pounds of Celluloid, 82 Fed. 627; Shawnee National Bank *v.* United States, 249 Fed. 583; United States *v.* One Automobile, 237 Fed. 891, in which courts have been able to find, sometimes by somewhat forced construction, such limitations on the forfeiture provided as to exempt an innocent owner or lienor. It is sufficient to say as to the statute now under consideration that such an exemption could only rest upon judicial insertion of limiting words not found in the statute."

Trees and Timber—Conveyance—Time for Removal.—In Houston Oil Co. *v.* Boykin, 206 S. W. 815, the Supreme Court of Texas held that under a contract of sale of standing timber, giving purchaser liberty to go upon land and remove timber as would be convenient to him, title passed to only so much of the timber as might be removed within a reasonable time, since removal clauses should not be construed as covenants.

The court said:

"The adjudged cases are generally in accord, and meet our approval, in construing instruments like the above, which merely convey timber with a license to remove same, without stipulating the time within which it may or must be removed, as implying the removal of the timber within a reasonable time. 17 R. C. L. 1082; Montgomery County Devel. Co. *v.* Miller-Vidor Lumber Co., 139 S. W. 1020 (3).

"The cases are in utmost conflict, however, in declaring the legal consequences of clauses in conveyances of growing timber, express

or implied, for removal of the timber within a limited time, be it within a stipulated or reasonable term.

"Some of the decisions, notably in Alabama and New Hampshire, adopt the view that such a clause does not prevent an absolute title to the timber from passing to the vendee; the agreement to remove being interpreted as a mere covenant of the vendee. Zimmerman Mfg. Co. *v.* Daffin, 149 Ala. 380, 42 South. 858, 9 L. R. A. (N. S.) 663, 123 Am. St. Rep. 58; Hoit *v.* Stratton Mills, 54 N. H. 109, 20 Am. Rep. 119; Pierce *v.* Finerty, 76 N. H. 38, 76 Atl. 194, 79 Atl. 23, 29 L. R. A. (N. S.) 547.

"Other decisions declare that a timber deed or contract with such a clause passes to the vendee a present title to the timber defeasible by failure to remove the timber within the limited time. Beauchamp *v.* Williams (Tex. Civ. App.), 115 S. W. 133; Macomber *v.* Railway Co., 108 Mich. 491, 66 N. W. 376, 32 L. R. A. 102, 62 Am. St. Rep. 713; Lumber Co. *v.* Corey, 140 N. C. 462, 53 S. E. 300; McRae *v.* Stilwell, 111 Ga. 65, 36 S. E. 604, 55 L. R. A. 513.

"Many cases, and perhaps the weight of modern authority, support the rule that timber deeds and contracts, containing time limits for the removal of the timber, pass no title whatever, save to so much of the timber as the vendee may remove within the time limited. Carter *v.* Clark & Boice Lumber Co. (Tex. Civ. App.), 149 S. W. 278; North Texas Lumber Co. *v.* McWhorter (Tex. Civ. App.), 156 S. W. 1153, 1154; Mengal Box Co. *v.* Moore, 114 Tenn. 596, 87 S. W. 415, 4 Ann. Cas. 1047, and note, page 1050; Young *v.* Camp Mfg. Co., 110 Va. 678, 66 S. E. 843.

"The reason for the rule last stated is well expressed in the opinion of Justice Levy in the case of Carter *v.* Clark & Boice Lumber Co. (Tex. Civ. App.), 149 S. W. 278, in the following language:

"'Having agreed to a limitation upon the right of removal, then the right of the purchaser to the timber is acquired by the act of removal and appropriation; and, as appropriation of the timber as such is dependent upon the removal from the soil, the intention of the parties would appear to be a contract of sale of such timber only as is removed within the time limited.'

"As several opinions have pointed out, it does not make much practical difference, with respect to the rights and remedies of the parties, whether we consider that the purchaser under these deeds and contracts acquires a present defeasible title or acquires title to only the timber removed. King *v.* Merrimann, 38 Minn. 47, 35 N. W. 570. The far-reaching difference is between the cases holding either of the doctrines last mentioned and the cases holding, on the contrary, that the purchaser gets an absolute title to all timber described in the granting clause of the deed or contract, and that the removal clause operates only as a covenant.

"After deliberate consideration, we find ourselves unable to con-

cur in the conclusion that the removal clauses should be construed as mere covenants of the vendees. In Alabama, the Supreme Court refused to extend relief to one who had allowed the time limit to expire without removing timber contracted to him, for the reason that the vendee could not enter the land to remove the timber without committing a trespass and equity's process and powers could not properly be so employed as to aid in a trespass. Mt. Vernon Lumber Co. *v.* Shepard, 180 Ala. 148, 60 South. 825. It would seem useless to affirm that one has a title and then declare the title incapable of enforcement or protection in law or equity. The Supreme Court of New Hampshire refused to award damages to a timber vendee, against a vendor, who refused to allow him to cut timber, after the expiration of the contractual time limit, notwithstanding the court was committed to the doctrine that the clause fixing the time for removal of the timber did not prevent the vendee from being still invested with absolute title, and, in refusing such damages, the court indicated that it might not be disposed to adhere to the doctrine had it not become a rule of property in that state. Pierce *v.* Finerty, 76 N. H. 38, 76 Atl. 194, 79 Atl. 23, 29 L. R. A. (N. S.) 547. It cannot be denied that, if the rule be adopted that the vendee of timber, under deed or contract fixing a limited time for removal, express or implied, has an absolute title to timber not removed, after expiration of the time limit, this title must be treated as an empty and barren one, because nonenforceable, or it must be treated as entitling its holder to the timber on compliance with such conditions as may be determined to be just and equitable. We are not at all inclined to adopt that construction of contracts which would give to parties nonenforceable titles, and we do not believe that it would comport with the true intention of the parties for us to adopt a construction which would make the ultimate rights of each party ascertainable only after judicial inquiry. Moreover we cannot sanction any rule which in its nature invites and encourages differences and litigation.

"It is the plain duty of this court to interpret these contracts, like all others, in such manner as will best carry out the intentions of the parties."